

## **REMARKS**

The Office Action of February 10, 2005 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

### **Species Election**

The Office Action states that the application contains claims directed to the following patentably distinct species:

- I.) The shoe sole shown in Figs. 2 and 3.
- II.) The shoe sole shown in Figs. 6 and 7.
- III.) The shoe sole shown in Fig. 8.
- IV.) The shoe sole shown in Fig. 9.

This requirement for an election of species is traversed. Applicant respectfully points out that the species of Figs. 2 and 3, Figs. 6 and 7, Fig. 8, and Fig. 9, and Figs. 4 and 5 would not have separate classifications, would not have separate status in the art, and would not require searches in different fields.

Additionally, the Office Action states that the following subspecies of material construction are present:

- A. The arrangement shown in Figs. 4 and 5.
- B. The arrangement shown in Figs. 10 and 11.

Applicant respectfully points out that the Figs. 4 and 5 are not directed to different sub species. Rather, they are section views of the embodiment illustrated in Fig. 2, as noted in the specification at page 5, paragraphs 13 and 14.

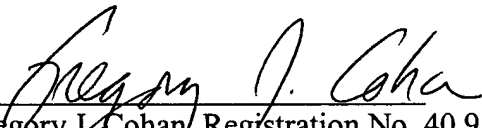
As required, applicant hereby provisionally elects Species I, directed toward Figs. 2 and 3. At least claims 1, 2, 5-9, 21, 22, 25, 26 and 25-29 are all readable on Fig. 2.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to **Deposit Account No. 19-0733.**

Respectfully submitted,

Dated:

March 7, 2005

  
Gregory J. Cohan, Registration No. 40,959  
Banner & Witcoff, Ltd.  
28 State Street, 28th Floor  
Boston, MA 02109  
(617) 720-9600